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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,169	01/30/2004	Junji Nishida	2004_0155A	4703

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WASHINGTON, DC 20006-1021

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,169

Applicant(s)

NISHIDA, JUNJI

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 9, 10, 12, 13, and 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Pub. No. US 2004/0010970 to Baumann.

Regarding Claim 9, Baumann teaches a plant pot comprising: a sidewall (Baumann Fig. 1 #3), a bottom wall attached to said sidewall, said bottom wall having a drainage through-hole; and a partition wall (Baumann Fig. 7 #30) extending upwards from an inner surface of said bottom wall, said partition wall being shaped and arranged to form a water storage portion (Baumann Fig. 10 #39) for holding water between an outer surface of said partition wall and an inner surface of said sidewall, and to form a drainage bowl portion having said drainage through-hole (Baumann Fig. 4 element #26) at a bottom thereof.

Regarding Claim 10, Baumann teaches said partition wall has a circular configuration and surrounds said drainage through-hole (Baumann Fig. 4 and 7).

Regarding Claim 12, Baumann teaches said drainage through-hole is located at a center of said bottom wall (Baumann Fig. 4 #26), said partition wall being formed

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around said central drainage through-hole so as to form a central drainage bowl portion (Baumann Fig. 4 #20).

Regarding Claim 13, Baumann teaches said water storage portion is formed around an entire periphery of said partition wall (Baumann Fig. 10 #39).

Regarding Claim 15, Baumann teaches said sidewall has a tapered shape having a small-diameter end at said bottom wall (Baumann Fig. 1 #3).

Regarding Claim 16, Baumann teaches said bottom wall has a groove (Baumann Fig. 7 groove created by element #30 on the underside of element #1) formed in an outer surface thereof so as to be located opposite said partition wall.

Regarding Claim 17, Baumann teaches said partition wall has a circular configuration, and said groove has a circular configuration corresponding to said partition wall (Baumann Fig. 7).

Regarding Claim 18, Baumann teaches said bottom wall has a convex shape (Baumann Fig. 7 #15), said drainage through-hole being located at an apex of said convex bottom wall.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent Pub. No. US 2004/0010970 to Baumann.

Regarding Claim 11, Baumann is silent on said partition wall integrally extends from said bottom wall such that said bottom wall and said partition wall have a one-piece construction. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Baumann at the time of the invention since the modification is merely an engineering manufacturing design choice for accurate placement of the partition the prevents undesirable displacement of the partition and does not present a patentably distinct limitation [*In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349 (CCPA 1965)].

Claims 14, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. US 2004/0010970 to Baumann in view of U.S. Patent No. Des. 19,406 to Whilldin.

Regarding Claims 14, 19 and 20, Baumann is silent on said sidewall has grooves formed in an end thereof closest to said bottom wall, said grooves communicating with said drainage though-hole to allow drainage and ventilation along an outer surface of said bottom wall via said sidewall. However, Whilldin teaches sidewall has grooves (Whilldin Fig. 1 and 2 element e) formed in an end thereof closest to said bottom wall, said grooves communicating with said drainage though-hole to allow drainage and ventilation along an outer surface of said bottom wall via said sidewall. It would have been obvious to one of ordinary skill in the art to modify the teachings of Baumann with the teachings of Whilldin at the time of the invention for an enhanced aesthetic appeal and architectural design to enhance consumer appeal.

Response to Arguments

Applicant's arguments with respect to claims 9-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

10 February 2005